IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Bail Appl..No. 4565 of 2007()

CC.947/2004 of J.M.F.C.,CHALAKUDY LPR NO.185/05

.....

PETITIONER/ACCUSED

JANARDHANAN, S/O.KOCHAMAN,
PATTILIKKADAN VEEDU, MATTATHOOT VILLAGE,
KORECHAL DESOM, THRISSUR DISTRICT.

BY ADV. SRI.A.C.DEVY

RESPONDENTS: RESPONDENT

STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 4565 of 2007

- -

Dated this the 31st day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 20(b)(i) of the N.D.P.S. Act. He was allegedly found to be in possession of 400 grams of ganja, which, as per the law at present, is a small quantity. Possession of such small quantity is a bailable offence.

2. The learned Prosecutor submits that the investigation is complete. Final report has already been filed. Consequent to the non-appearance of the petitioner warrant of arrest has been issued by the learned Magistrate to procure the presence of the petitioner.

3. I am of the opinion that the offence being bailable it is for the petitioner to appear before the court concerned and seek regular bail. I find absolutely no reason to invoke the powers under Section 438 Cr.P.C. even assuming that such power can be invoked as explained in the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662), in view of the pendency of the non-bailable warrant issued by the learned Magistrate. In these circumstances I

am satisfied that the petitioner must appear before the learned Magistrate and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

tm